



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

September 16, 1997

Mike Moses  
Commissioner of Education  
Texas Education Agency  
William B. Travis Building  
1701 N. Congress Avenue  
Austin, Texas 78701-1494

Dear Commissioner Moses:

During the week of September 16, 1996, the Office of Special Education Programs (OSEP), United States Department of Education, conducted an on-site review of the Texas Education Agency's (TEA) implementation of Part B of the Individuals with Disabilities Education Act (IDEA). The purpose of the review was to determine whether TEA is meeting its responsibility to ensure that special education programs for children and youth with disabilities are administered in a manner consistent with the requirements of IDEA. Enclosure A to this letter describes OSEP's monitoring methodology and corrective action procedures; Enclosure B lists several commendable initiatives by TEA; and our findings with respect to TEA's compliance with the requirements of Part B of the IDEA are in Enclosure C.

Because OSEP conducted the on-site review prior to the June 4, 1997 enactment of the Individuals with Disabilities Education Act Amendments of 1997, OSEP's compliance determinations and the findings in this report are based upon the requirements of Part B as in effect prior to the enactment of those Amendments. OSEP will work with TEA to ensure that all corrective actions, in addition to correcting all deficiencies, are consistent with the requirements of Part B as in effect at the time that the corrective actions are implemented.

TEA implemented a number of corrective actions to address the findings in OSEP's February 1993 monitoring report. As part of our current review, OSEP found no deficiencies in TEA's procedures for reviewing and approving local educational agency applications, child identification, or in due process and procedural safeguards. It appears, therefore, that TEA's corrective actions in these areas were effective.

As addressed in Enclosure B, we also found that TEA has taken a number of noteworthy initiatives to improve educational services to students with disabilities, such as the steps TEA has taken to begin including these students in the Statewide assessment and accountability

600 INDEPENDENCE AVE., S.W. WASHINGTON, D.C.

*Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.*

system, a parent information hotline and a mediation system. OSEP was also impressed that TEA has flowed approximately \$20 million to districts throughout the State for pilot projects to promote the inclusion of students with disabilities in regular education classrooms.

OSEP's monitoring places a strong emphasis on those requirements most closely associated with positive results for students with disabilities. Accordingly, as part of our review of TEA, we collected data to determine the effectiveness of TEA's system in: identifying and ensuring the correction of deficiencies through monitoring; ensuring that all eligible students with disabilities receive a free appropriate public education, as determined through the development of an individualized education program (IEP); placement in the least restrictive environment; the provision of needed transition services; and ensuring that parents are appropriately included in decision-making regarding the education of their child with a disability.

Our monitoring revealed that TEA has not ensured that: (1) complaints are investigated and resolved within 60 days, unless the timeline is extended due to extraordinary circumstances; (2) IEPs include a statement of needed transition services that meets the requirements of 300.18 and 300.346(b); and (3) evaluations and reevaluations are conducted in a timely manner.

In addition, OSEP noted continued problems in several areas. OSEP is particularly concerned that TEA has not consistently monitored public agencies in order to identify and ensure correction of public agencies' deficiencies. Continuing deficiencies were also noted regarding requirements for ensuring that students with disabilities receive all the services they need as part of a free appropriate public education, and ensuring that students with disabilities are placed in the least restrictive environment.

Dr. Gregory Corr, the OSEP monitoring team leader, discussed the team's preliminary Part B findings with Ms. Jill Gray and other staff in TEA's Office of Special Education, in a conference call after the visit. Discussion of compliance issues was continued on October 31, 1996, when Dr. Corr met with Ms. Gray and her staff in Austin during the Department's integrated review of Texas. TEA was invited to provide any additional information that it wanted OSEP to consider in developing the monitoring report. On December 2, 1996, TEA submitted proposed corrections to address deficiencies with its complaint management system.

The findings in this Report are final, unless--within 15 days from the date on which TEA receives this Report--TEA concludes that evidence of noncompliance is significantly inaccurate and that one or more findings is incorrect and requests reconsideration of such finding(s). Any request for reconsideration must specify the finding(s) for which TEA requests reconsideration, and factual and/or legal basis for the request, and must include documentation to support the request. OSEP will review any TEA request for consideration and, if appropriate, issue a letter of response informing TEA of any revision to the findings. Requests for reconsideration of a finding will not delay Corrective Action Plan development and implementation timelines for findings not part of the reconsideration request.

Page 3 - Honorable Mike Moses

I thank you for the assistance and cooperation that Ms. Gray and her staff provided during our review. Throughout the monitoring process, they were very responsive in providing information that enabled OSEP staff to acquire an understanding of Texas's systems to implement IDEA. Our staff is available to provide technical assistance during any phase of the development and implementation of TEA's corrective actions. Please let me know if we can be of assistance.

Prior to the enactment of the Individuals with Disabilities Education Act (IDEA) and its predecessor the Education of All Handicapped Children Act, one million children with disabilities were excluded from school altogether, and another 3.5 million were not receiving appropriate programs within the public schools. The enactment of the IDEA, and the joint actions of schools, school districts, State educational agencies and the Department, have now made it possible for more than 5.4 million children with disabilities to participate in our country's public educational programs. Thank you for your continuing efforts to improve educational services and results for children and youth with disabilities in Texas.

Sincerely,

Thomas Hehir  
Director  
Office of Special Education  
Programs

Enclosures

cc: Ms. Jill Gray



## **ENCLOSURE A**

### **OSEP's Monitoring Methodology**

Pre-site Document Review: As in all States, OSEP used a multifaceted process to review compliance in Texas. In addition to on-site visits, this process includes: review and approval of the State's Part B State plan, which includes the State's statutes and regulations, policies and procedures, and interagency agreements that impact the provision of services to students with disabilities; and review of complaints, requests for secretarial review, other correspondence, and telephone calls that OSEP receives regarding the State's compliance. Prior to its visit to Texas, OSEP also requested and reviewed additional documentation regarding the State's implementation of compliance with requirements regarding due process hearings, complaint resolution, and monitoring, as well as child count and placement data.

Involvement of Parents and Advocates: During the week of April 22, 1996, OSEP held six public meetings across Texas in Austin, Dallas, El Paso, Harlingen, Houston and Lubbock. Also during that week, Dr. Corr, Dr. Bobbi Stettner-Eaton, and Ms. Debra Sturdivant met with representatives from advocacy groups in two outreach meetings, interviewed a number of TEA officials, and reviewed numerous TEA documents. The purpose of the public and outreach meetings was to solicit comments from parents, advocacy groups, teachers, administrators and other interested citizens regarding their perceptions of Texas's compliance with IDEA. In the letters inviting interested parties to the public meetings, OSEP also invited them to provide written comments and telephone input regarding their perceptions. OSEP received a number of written responses from across the State.

During the on-site visit, OSEP conducted a parent focus group meeting in one of the public agencies it visited in order to hear parents' impressions of special and regular education services provided to their children. This meeting provided OSEP staff with parent views of the methods used by the public agency in providing a free appropriate public education to its children, as well as the challenges faced by the public agency in this endeavor.

Selection of Monitoring Issues and Public Agencies to Visit: OSEP has identified core requirements that are most closely related to learner results, and focuses its compliance review in all States on those core requirements (e.g., transition from school to work and other post-school activities, placement in the least restrictive environment, parent participation in decision-making, etc.). OSEP also focuses its review in each State on additional requirements. The information that OSEP obtained from its pre-site public meetings and outreach meetings, interviews with State officials, and review of State and local documentation, assisted OSEP in: (1) identifying the issues faced by consumers and others interested in special education in Texas; (2) selecting monitoring issues (e.g., the provision of related services) to be emphasized while on-site; and (3) selecting the sites to be monitored.

On-site Data Collection and Findings: The OSEP team included Dr. Corr, the OSEP Team Leader, and Ms. Sturdivant, OSEP's State contact for Texas, who interviewed State education agency staff and reviewed relevant TEA documentation. Dr. Corr and Ms. Sturdivant also collected implementation data in local school systems. Dr. Stettner-Eaton and Ms. Maryann

McDermott reviewed Texas's early intervention programs.<sup>1</sup> The remainder of OSEP's Part B review team consisted of Mr. Larry Ringer, Ms. Lois Taylor, Dr. Ray Myers, Dr. Ken Kienas, Dr. Larry Wexler and Ms. Barbara Route. In addition, Ms. Gloria Corral from the Department's Office of Elementary and Secondary Education and a member to the Integrated Review Team that subsequently visited Texas in October 1996, accompanied the OSEP team as an observer.

OSEP visited three elementary schools, four middle schools, nine high schools, a separate high school, and a congregate care facility in eleven school districts. Where appropriate, OSEP has included in Enclosure C data that it collected from those agencies that support or clarify its findings regarding the sufficiency and effectiveness of TEA's systems for ensuring compliance with the requirements of Part B.

In order to reinforce that the findings in Enclosure C focus on the effectiveness of TEA's systems for ensuring compliance rather than compliance in any particular local educational agency, OSEP has not used the name of any local educational agency within Enclosure C. Instead, OSEP has identified local educational agencies in Enclosure C only with designations such as "Agency A." The agencies that OSEP visited and the designation that OSEP has used in Enclosure C to identify each of those agencies are set forth below:

PUBLIC AGENCY	DESIGNATION
Austin ISD	AGENCY A
Houston ISD	AGENCY B
San Antonio ISD	AGENCY C
Lubbock ISD	AGENCY D
Barbers Hill ISD	AGENCY E
Gladewater ISD	AGENCY F
Arlington ISD	AGENCY G
Brownsville ISD	AGENCY H
Corpus Christi ISD	AGENCY I
El Paso ISD	AGENCY J
South Texas ISD	AGENCY K

---

<sup>1</sup> A separate report on the results of OSEP's review of Texas's Part H program will be issued to the Interagency Coordinating Council.



## CORRECTIVE ACTION PROCEDURES

In order to support the development of a mutually agreeable corrective action plan that will correct the findings in Enclosure C and improve results for students with disabilities, OSEP proposes that TEA representatives meet with OSEP staff, in a meeting or telephone conference, to discuss the findings and the most effective methods for ensuring compliance and improving programs for children with disabilities in the State, and to agree upon specific corrective actions. We also invite a representative from Texas's Special Education Advisory Council to participate in that discussion. TEA's corrective action plan must be developed within 45 days of TEA's receipt of this letter. Should we fail to reach agreement within this 45 day period, OSEP will be obliged to develop the corrective action plan.

Enclosure C outlines the general corrective actions that TEA must take to begin immediate correction of the findings in the Enclosure, as well as guidelines for the more specific actions that TEA must take to ensure correction of each of the specific findings in Enclosure C.

## ENCLOSURE B

### COMMENDABLE INITIATIVES

OSEP identified the following commendable TEA initiatives as part of its on-site review:

1. **Hotline** - TEA maintains a toll-free hotline number to answer parents' questions about special education and provide them with information that will help them resolve issues involving their children's special education programs. TEA staff also provide callers with information about filing a complaint or requesting a due process hearing. The hotline provides a voice mail response in both English and Spanish. Support staff access voice mail every two hours and then refer these calls to one of four or five program staff persons. During the 1995-96 school year, TEA responded to 8,609 hotline calls.

2. **Mediation** - TEA contracts with eight trained mediators to help parents and school districts resolve disputes informally as an alternative to the due process system. Between September 1995 and August 1996, TEA received 563 requests for mediation. While many issues were resolved prior to mediation, 161 mediations were actually conducted; in 130 of these cases an agreement was reached between the parties. TEA ensures that mediators are properly trained and meets with them quarterly. Mediators, who are drawn from diverse backgrounds, are regionally based.

3. **Integrated Fund Management System** - The Integrated Fund Management System will enable local districts to receive funding and submit funding applications, amendments, and expenditure reports electronically. This process results in reduced administrative costs, and will make funds available on a more timely basis. Full implementation of this system for special education began during the 1996-97 school year.

4. **Training Efforts and Publications** Each year, TEA staff conduct numerous training events and sponsored conferences reaching over 13,000 individuals (1994-95 school year). Examples of these activities include training on emotional disturbance, collaborative education, assistive technology, learning disabilities, inclusion, postsecondary transition, and autism. In addition, TEA has developed and made available several high-quality publications such as Rules and Regulations for Providing Special Education Services, a side-by-side comparison of State, Federal, Headstart and Child Care regulations was developed. This has been disseminated at State-wide training in conjunction with the Education Service Centers to over 1,200 individuals.

5. **Inclusion Pilot Projects** Through its Leadership for Improving Special Education Services in Texas, TEA has flowed approximately \$20 million to districts throughout the State for pilot projects to promote the inclusion of students with disabilities in regular education classrooms. In 1993 and 1994, TEA offered Requests for Applications resulting in the approval of projects in 73 and 115 school districts, respectively. Those projects were evaluated and information on successful models was disseminated to Education Service Centers so that they could provide technical assistance to local districts.

6. **Statewide Assessment and Accountability System:** Texas has taken important steps to ensure that students with disabilities are included in the State's assessment and accountability system. Approximately 50% of students with disabilities participate in State assessments, while the remainder have been exempted. Senate Bill 1, enacted in the Texas Legislature in May 1995, include a requirement that an assessment system be developed for all students currently exempted from State assessments, and that their performance results be included in the accountability system. The alternative assessment is to be fully implemented by the 1998-99 school year.

## **ENCLOSURE C -- FINDINGS AND CORRECTIVE ACTIONS**

### **GENERAL CORRECTIVE ACTIONS**

In order to begin immediate correction of the findings set forth in the table following, TEA must take the following general corrective actions:

1. TEA must develop a memorandum informing all public agencies of OSEP's findings, and directing them to determine whether they have complied with Part B requirements, as clarified by OSEP's report. The memorandum must further direct these agencies to discontinue any noncompliant practices and implement procedures that are consistent with Part B. TEA must submit this memorandum to OSEP within 30 days of the date of this letter. Within 15 days of OSEP's approval of the memorandum, TEA must disseminate it to all public agencies throughout the State providing special education or related services to students with disabilities.
2. TEA must also disseminate a memorandum to those agencies in which OSEP found deficient practices, as identified in Enclosure C of this letter, requiring those agencies to immediately discontinue the deficient practice(s) and submit documentation to TEA that they have implemented revised procedures that correct the deficiencies and comply with Part B requirements. TEA must submit this memorandum to OSEP within 30 days of the date of this letter. Within 15 days of OSEP's approval, TEA must disseminate the memorandum to those public agencies in which OSEP found deficient practices. TEA must send to OSEP verification that these public agencies have completed all of these corrective actions.

## FINDINGS AND SPECIFIC CORRECTIVE ACTIONS

<i>O S E P   F I N D I N G</i>	<i>E X P E C T E D R E S U L T S</i>
<p><b><u>STATE EDUCATIONAL AGENCY MONITORING</u></b></p> <p><b><u>BACKGROUND:</u></b> In its 1993 report to TEA, OSEP found a number of deficiencies with TEA's monitoring procedures for identifying and ensuring correction of local agency noncompliance with Part B requirements. At the time of OSEP's April 1992 visit, TEA had recently discontinued its comprehensive monitoring system, based on a five-year cycle. Beginning with the 1992-93 school year, TEA began piloting a new system called Results Based Monitoring (RBM). TEA submitted the Results Based Monitoring system to OSEP to address monitoring issues included in OSEP's 1993 report. Results Based Monitoring was piloted for two years in seventy volunteer districts. Based on district feedback, the system was streamlined for the Benchmark Year (1995-96).</p> <p>The Results Based Monitoring system consisted of the following components:</p> <p>(1) <b>Desk Indicator Review.</b> Indicators of performance and compliance drawn from data available at TEA. Data are supplied through Public Education Information Management Systems (PEIMS), Texas Assessment of Academic Skills (TAAS) results, performance reports, relevant portions of student eligibility folders, etc. Data are formatted in Desk Review Analysis Reports which the local educational agency can use in conducting the local assessment of performance and compliance.</p> <p>(2) <b>Local Indicator Review.</b> Consists of indicators of performance and compliance that are only available locally. These are gathered and analyzed in a Summary of Findings.</p> <p>(3) <b>Summary of Findings.</b> Reports results of local data assessment and shows ratings of performance and compliance. Identifies program strengths, priorities for improvement, compliance status and need corrective actions. Includes a superintendent's assurance that the review was conducted properly and that results will be implemented. Summary is submitted to TEA and the findings are used by the local educational agency to develop a local improvement plan.</p> <p>(4) <b>Data Verification Visit.</b> TEA representatives visit each local educational agency to review a sample of data already reviewed locally and implementation of any corrective actions identified through the Desk and Local Indicator Reviews. TEA team may include personnel from other local educational agencies.</p> <p>(5) <b>Focused Consultative Visit.</b> Conducted by TEA <u>upon request of the local educational agency or if recommended</u> by TEA staff to provide additional assistance on major performance or compliance issues. Intent is to support local efforts to improve performance or compliance.</p>	<p>TEA will develop and implement a comprehensive compliance monitoring system that identifies, and ensures effective correction of, Part B deficiencies in a timely manner.</p>
<p><b><u>FINDING:</u></b> OSEP finds that TEA did not ensure that it implemented a proper method to monitor public agencies responsible for carrying out special education programs. 20 U.S.C. 1232d(b)(3)(A). During the 1992-93 through the 1995-96 school years, Texas monitored 108 of its 1,065 districts. Only districts that volunteered to participate in the pilot were reviewed using the Results Based Monitoring system. With the exception of a few follow-up reviews resulting from previous comprehensive monitoring reviews, TEA's comprehensive cyclical monitoring was discontinued after the 1991-92 school year. As a result, 541, roughly half of Texas's districts, received only one visit between the 1986-87 and 1995-96 school years. Two-hundred five of these districts had not been monitored in eight or more years.</p> <p><b><u>Districts Receiving On-site Verification Visits Through the Results-Based Monitoring System:</u></b></p> <p>1992-93 - 17 ISDs  1993-94 - 43 ISDs<sup>2</sup>  1994-95 - 0 ISDs<sup>2</sup></p>	

<sup>2</sup> As required by the Texas Legislature, 267 districts were monitored by TEA for purposes of students residing in congregate care facilities.

<sup>3</sup> Late in the 1996-97 school year, OSEP was informed by TEA that it had fallen short of its goal of monitoring 160 districts. TEA has proposed to move from a five-year to a six-year cycle.

OSEP FINDING	EXPECTED RESULTS												
<p>1995-96 - 48 ISDs (Benchmark "year" )</p> <p>Beginning late in the 1994-95 school year and continuing during the 1995-96 school year, TEA underwent a number of significant changes. The new commissioner eliminated separately-conducted monitoring by program and moved the responsibility for all monitoring, including special education monitoring, into the Office of Accountability and School Accreditation. The Division of Special Education was downsized and some functions were decentralized. The Division was reduced by approximately 60 staff members and some of the functions formerly residing within the Division were transferred to the twenty regionally-based Education Service Centers. Ultimately, special education compliance monitoring positions were eliminated as TEA moved towards a system of contracting for special education monitoring services.</p> <p>The Results Based Monitoring system never moved beyond its pilot stage to full implementation. TEA discontinued the Results Based Monitoring system after the 1995-96 school year and developed a new system called District Effective Compliance (DEC). Under this system, TEA planned to conduct cyclical district reviews for each district once every five years. The system is designed to determine the effectiveness of the district in addressing the needs of all student populations, including students with disabilities, and to ensure that the districts' programs are functioning in accordance with Federal and State requirements.</p> <p>Under the District Effective Compliance system, TEA made a commitment to return to a mandatory, cyclical monitoring system that would ensure that each district was reviewed at least once every five years. Four staff were hired to direct TEA's efforts to monitor districts for special education compliance. Also, the Office of Accountability and School Accreditation was authorized to contract the services of 30 special education monitors. During the 1996-97 school year, TEA planned to monitor 160 districts for special education requirements and conduct an additional 47 follow-up reviews of districts which had been required to carry out corrective actions as a result of TEA's monitoring of congregate care facilities.<sup>3</sup></p>													
<p>Of the eleven districts that OSEP visited in 1996, only three had received comprehensive compliance reviews of their special education programs since TEA completed revisions to its monitoring process, as required by OSEP's 1993 report.<sup>4</sup> Agencies A, E and H participated in Results-Based Monitoring visits in 1994, 1996 and 1995, respectively. In all three cases, TEA failed to identify deficiencies in areas in which OSEP identified deficiencies when it visited those districts in 1996 (transition, at minimum). For the other eight districts that OSEP visited in 1996, TEA had conducted no compliance monitoring reviews since 1991 or earlier. Consequently, for those districts TEA did not meet its responsibility to identify and ensure the correction of Part B deficiencies regarding requirements for least restrictive environment, postsecondary transition and the provision of services necessary for a free appropriate public education, as documented in subsequent pages of this report.</p> <p><u>TEA's Most Recent Compliance Reviews for Districts Visited by OSEP in 1996<sup>5</sup></u></p> <table data-bbox="121 987 693 1141"> <tr> <td>Agency A - 1994 (RBM)</td><td>Agency G - 1990</td></tr> <tr> <td>Agency B - 1991<sup>6</sup></td><td>Agency H - 1995 (RBM)</td></tr> <tr> <td>Agency C - 1991</td><td>Agency I - 1991<sup>7</sup></td></tr> <tr> <td>Agency D - 1988</td><td>Agency J - 1989</td></tr> <tr> <td>Agency E - 1996 (RBM)</td><td>Agency K - 1990<sup>8</sup></td></tr> <tr> <td>Agency F - 1988</td><td></td></tr> </table>	Agency A - 1994 (RBM)	Agency G - 1990	Agency B - 1991 <sup>6</sup>	Agency H - 1995 (RBM)	Agency C - 1991	Agency I - 1991 <sup>7</sup>	Agency D - 1988	Agency J - 1989	Agency E - 1996 (RBM)	Agency K - 1990 <sup>8</sup>	Agency F - 1988		
Agency A - 1994 (RBM)	Agency G - 1990												
Agency B - 1991 <sup>6</sup>	Agency H - 1995 (RBM)												
Agency C - 1991	Agency I - 1991 <sup>7</sup>												
Agency D - 1988	Agency J - 1989												
Agency E - 1996 (RBM)	Agency K - 1990 <sup>8</sup>												
Agency F - 1988													

<sup>4</sup> In addition, two of the eight districts received follow-up visits from TEA in 1994.

<sup>5</sup> TEA's reviews were conducted using its five-year comprehensive compliance system, except for agencies A, E and H where the Results Based Monitoring system was used.

<sup>6</sup> Follow-up occurred in 1994.

<sup>7</sup> Follow-up occurred in 1994.

<sup>8</sup> TEA informed OSEP that the final report and all special education corrective actions are missing from this February 2, 1990 report.

<i>O S E P F I N D I N G</i>	<i>E X P E C T E D R E S U L T S</i>
<p><b>FINDING:</b> The procedures for TEA's District Effective Compliance system (<a href="#">Reference Guide</a>, September 1996) state that, "a discrepancy will be cited during the on-site review when it is determined that the violation in question occurs systemically throughout a campus, district, or a cooperative ... As a general rule, a discrepancy will be cited when a violation is found in 30% or more of the student programs reviewed." Violations of "a more serious nature" (e.g., not conducting an assessment before placement, not developing an IEP before placement or for continued placement, inappropriate justification for placement, failure to serve appropriately those students associated with high-risk factors such as low incidence disability or residential care facility placement) are to be cited whenever a single violation occurs. Otherwise, violations that occur in less than 30% of the files sampled are not cited, and TEA requires agencies to take no corrective action.</p> <p>Although a State educational agency has some discretion about the method it uses to identify and ensure correction of deficiencies, it is responsible for ensuring that all Part B requirements are met by subgrantees for all students with disabilities. TEA must identify and document all noncompliance found through its monitoring process, even where the violation does not reach the 30% threshold, or does not meet the definition for "violations of a serious nature." Further, although corrective action that TEA requires may vary depending upon how isolated or systemic a finding is, it must ensure correction of all identified noncompliance.</p>	<p>TEA's must develop and implement monitoring procedures ensure the identification and correction of all Part B deficiencies, regardless of the prevalence or magnitude of those findings.</p>

OSEP FINDING	EXPECTED RESULTS
<p><b><u>COMPLAINT MANAGEMENT</u></b></p> <p>TEA is responsible for ensuring that any signed, written complaint that a public agency has violated a requirement of Part B be resolved within 60 calendar days after the complaint is filed, unless TEA has extended the time limit because exceptional circumstances exist with respect to a particular complaint. 300.661(a).</p> <p><b><u>FINDING:</u></b> OSEP finds that TEA did not meet its responsibility to resolve complaints within the timelines specified by Part B. OSEP reviewed TEA's log for "Special Education Complaints" which lists technical assistance requests, mediation requests and formal complaints. From September 1, 1994 to December 31, 1995, 104 formal complaints were logged with TEA. Of these 104, 54 exceeded the 60 day timeline.<sup>9</sup> Of the 54 cases which exceeded the 60 day timeline, 31 were closed two weeks or more beyond the 60 day timeline. OSEP reviewed TEA records for 10 of these 31 cases to determine the reasons that they were not resolved within 60 days and whether TEA had documented extensions due to exceptional circumstance with regard to particular cases.</p> <p>TEA's process relies on local districts submitting documentation necessary to determine whether the allegations contained in the complaint are true. OSEP's review of TEA complaint files revealed that the most common reason for exceeding the timeline was that districts failed to submit documentation in a timely manner. Although it is permissible for a State educational agency to rely primarily on local districts to submit data necessary to reach compliance determinations, districts' failure to do so in a timely manner does not constitute exceptional circumstances unique to those cases. On the contrary, late submission of needed documentation was the major contributing cause of TEA exceeding the 60-day complaint timeline.</p> <p>TEA does not record the date a complaint is first received by TEA in its complaint log. OSEP learned from its review of TEA's specific complaint files that TEA did not calculate the 60-day timeline beginning with date that the complaint was received by TEA. Rather, the incoming complaint would be logged in by a clerical staff member and would later be reviewed by the manager of TEA's complaint unit to determine whether the contents of the letter constituted a formal complaint. It was only after a such a determination had been made that the incoming correspondence would be entered into the complaint system and that the 60-day timeline would begin. In many cases, TEA was able to review incoming correspondence to determine whether they constituted complaints within a day or so. However, in its review of complaint files, OSEP saw instances where the 60-day time period did not begin until two weeks or more after TEA received the complaint. It is TEA's responsibility to investigate and resolve all complaints within 60 days of the date of TEA's initial receipt of a complaint, unless the timeline is extended due to exceptional circumstances exist with regard to a particular complaint.</p> <p>In a December 2, 1996 letter to OSEP, TEA submitted corrective actions to address the above-noted deficiencies with its complaint management system. OSEP has determined that these revised procedures, if properly implemented, should result in the correction of these deficiencies.</p>	<p>The implementation of TEA's complaint management system results in complaints being investigated and resolved within 60 days, unless an extension is necessary due to exceptional circumstances with respect to a particular complaint. TEA will submit to OSEP (1) verification that the procedures enclosed with its 12/2/96 letter have been implemented, and (2) quarterly reports which include timelines for resolving complaints during the 1997-98 school year.</p>

<sup>9</sup> In 14 of the 104 cases, TEA's log showed no closure date. OSEP did not include these in the total number of cases which exceeded the 60 day timeline.

OSEP FINDING	EXPECTED RESULTS
<p><b><u>LEAST RESTRICTIVE ENVIRONMENT</u></b></p> <p><b><u>BACKGROUND:</u></b> During OSEP's 1992 review of TEA, OSEP made extensive findings in the area of placement in the least restrictive environment. In its February 26, 1993 monitoring report, OSEP found that TEA's monitoring procedures for identifying and correcting deficiencies regarding the requirements of 300.550(b), 300.551, 300.552(a)(2) and 300.553 were not effective. As part of the 1992 review, OSEP made site visits to six local education agencies. OSEP found noncompliance with the least restrictive environment requirements in five of these agencies. Specifically, OSEP found that students with disabilities were not being educated to the maximum extent appropriate with nondisabled students; that students were removed from the regular education environment without a determination of whether education could be achieved satisfactorily in regular classes with the use of supplementary aids and services; that a full continuum of alternative placement options for all students with disabilities was not available; that placements were not based on the IEP; that students were not educated in the school that they would attend if not disabled, unless the student's IEP required some other arrangement; and that individual determinations were not made regarding the extent to which it was appropriate for students with disabilities to participate with nondisabled students in nonacademic and extracurricular services and activities. As a result of these findings, TEA was required to initiate a number of corrective actions to address the least restrictive environment findings included in the 1993 Monitoring Report. These actions included revising TEA's monitoring system, revising its local educational agency application procedures, issuing a memorandum to all agencies across the State regarding least restrictive environment requirements, and conducting Statewide training regarding the implementation of the least restrictive environment requirements for students with disabilities. TEA has completed all of the corrective actions required to address the deficiencies identified by OSEP in the 1993 Monitoring Report with respect to the least restrictive environment requirements.</p> <p>As part of its current monitoring process, OSEP reviewed the most recent monitoring reports issued by TEA to each of the eleven public agencies visited by OSEP. In eight of the agencies, TEA had not conducted district-wide special education compliance reviews subsequent to OSEP's 1992 review. Therefore, TEA had not used its revised monitoring procedures to identify and ensure correction of any violations of the least restrictive environment requirements in those agencies. In the three agencies which TEA had monitored subsequent to OSEP's 1992 review, TEA made no findings in the area of least restrictive environment. As noted in the findings below, OSEP found noncompliance with regard to the least restrictive environment requirements in each of these three agencies.</p>	<p>TEA must ensure that, in making the placement decision for each student with a disability, each public agency ensures that:</p> <p>(1) to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily; (2) a continuum of alternative placements is available to meet the needs of children with disabilities for special education and related services, and the various alternative placements included at 300.551 are available to the extent necessary to implement the IEP for each child with a disability; (3) the placement for each child with a disability is determined annually and based on the child's IEP; and (4) each child with a disability participates with nondisabled children in nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in 300.306, to the maximum extent appropriate to the needs of that child. As part of this corrective action, TEA must ensure that it meets the requirements of 300.555 and 300.556, regarding technical assistance, training, and monitoring. TEA must assess the effectiveness of its corrective actions, and report to OSEP regarding such effectiveness and any additional actions that TEA determines are necessary to ensure full correction of the deficiencies cited in this section.</p>
<p><b><u>FINDINGS:</u></b> OSEP finds that TEA did not ensure, in all cases, that public agencies implemented policies and procedures which complied with the least restrictive environment requirements at 300.550(b), 300.551, 300.552(a)(2) and 300.553. While onsite, OSEP staff reviewed student files and interviewed both regular and special education teachers who participated in the most recent IEP meeting, related service providers, building principals, and school based and agency administrators responsible for the provision of special education in the eleven public agencies visited. OSEP did note progress in the districts visited regarding the use of alternative methods of providing special education in less restrictive settings through resource room programming and regular education classes in neighborhood schools for students with mild disabilities. However, it also found in some of the districts visited that students with disabilities were not</p>	

OSEP FINDING	EXPECTED RESULTS
<p>being educated to the maximum extent appropriate with nondisabled students; that students were removed from the regular education environment without a determination of whether their education could be achieved satisfactorily in regular classes with the use of supplementary aids and services; that a continuum of placement options for all students with disabilities was not available; that placements were not based on the IEP; and that individual determinations were not made regarding the extent to which it was appropriate for students with disabilities to participate with nondisabled students in nonacademic and extracurricular services and activities.</p> <p>OSEP was informed by teachers, related services personnel and administrators in ten of the eleven public agencies visited that students with moderate to profound disabilities (including those students with mental retardation, serious emotional disturbance, and multiple disabilities) are placed in self contained classes and separate special education facilities. In addition, it was reported to OSEP that only these two placement options are available for consideration for students who are on a basic skills/vocational skills track, (primarily those students with moderate disabilities including mental retardation, other health impaired and multiple disabilities). For the majority of students with disabilities placed in self-contained classes and separate facilities, OSEP found that there was no individualized determination as to the maximum extent to which it was appropriate for each student with disabilities to participate with students who do not have disabilities in nonacademic and extracurricular services and activities.</p> <p>Administrators and teachers in Agencies A and H reported to OSEP that no individualized determination is made as to the maximum extent to which students with moderate to severe disabilities who are served on the basic skills/vocational skills curriculum track, can be educated with students who do not have disabilities.</p> <p>In response to OSEP's questions regarding students with disabilities' participation in regular education classes and activities, a teacher in Agency A explained to OSEP that this population of students is on a basic skill/home life track. None of the students with disabilities participate in regular classes, because the priorities of this program involve practical application, independent living and getting a job. All of the students in this class are in the "integrated vocational education (IVE) program" ("integrated" here does not connote integration with nondisabled students); none of the students are in regular academic classes. OSEP reviewed the IEPs of students in the teacher's class and found that where the form required information regarding a student's participation in regular education classes and activities, the IEPs included a statement that no regular education participation was considered, "due to vocational and basic skills training." This information was confirmed during an interview with two administrators in Agency A. In addition, an administrator in Agency A further reported to OSEP that for students with disabilities who are medically involved and are served at a separate facility in the district, there was no individualized determination as to the maximum extent to which it was appropriate for each child placed in the separate school to participate with children who do not have disabilities in academic or nonacademic and extracurricular services and activities. The administrator stated that some of the students have been at the separate facility since the beginning, the placements for the students are reviewed annually, and the IEP decisions state that services are not available at regular campuses.</p>	
<p>An administrator and teachers in Agency H reported to OSEP that there are students in the basic skills classes who could benefit from nonacademic participation and in some cases, regular education classes such as art and music with their nondisabled peers. It was explained to OSEP that it is the responsibility of the special education teacher to make arrangements with regular education grade level teachers for inclusion. The teachers further commented that while there are co-planning days figured into the schedule that could help facilitate opportunities for inclusion, it depends on the receptiveness of regular education teachers to accept these students in their classes. One teacher from this agency informed OSEP that while the IEPs of the students in the class indicate that the students are provided physical education in regular education classes with students who do not have disabilities, the students in the class automatically go as a group to physical education which is taught by the regular physical education teacher. Integration opportunities occur on a group basis for physical education without individual consideration of student needs by the IEP team for additional participation on an individual basis. Another teacher and an administrator in Agency H confirmed that preschool aged students with disabilities are not integrated with regular pre-kindergartners or kindergartners this year as they have been in past years. This is because aides are not available this year to support the students in the regular education classes, and regular education teachers need more training to work with these students in their classes. The teacher reported that there is no individual determination regarding the appropriateness of integrating the special education preschool students with their nondisabled peers. It was further explained to OSEP that the teacher determines when students are ready to participate in regular class activities with nondisabled students.</p> <p>Administrators and teachers in Agencies C, F and G also reported to OSEP that for students with severe disabilities there was no individualized determination as to the maximum extent to which it was appropriate for each of these students to participate with students who do not have disabilities in nonacademic and extracurricular services and activities. OSEP reviewed the IEPs of students in the teachers' classes and found that where the form required information regarding a student's participation in regular education classes and activities, the IEPs included a statement that the students would be included in lunch; however, the teachers reported that the students were not, in fact, participating in lunch as their IEPs stated. A teacher in Agency C explained that all of the</p>	

<i>O S E P F I N D I N G</i>	<i>E X P E C T E D R E S U L T S</i>
<p>students in the class could appropriately have lunch in the cafeteria with nondisabled students if aides were available to assist with the students' wheelchairs. An administrator and a teacher in Agency F informed OSEP that some students with severe disabilities do not participate at lunch time with nondisabled students because there is not enough room in the cafeteria so that they could participate comfortably. Last year there was more room in the lunchroom and they did participate at lunch time. For other students with severe disabilities, the decision about whether these students will participate at lunchtime with nondisabled students is determined by the teacher, rather than as part of the placement decision.</p> <p>Administrators, teachers and Diagnosticians in Agencies B, C, and E reported to OSEP that students with serious emotional disturbance who are placed in Behavior Adjustment Classes (BAC) (which are primarily self-contained classes) and in separate school facilities do not have individualized determinations made as to the maximum extent to which these students can be educated with nondisabled students, or participate with them in nonacademic and extracurricular services and activities. An administrator in Agency B informed OSEP that students in Behavior Adjustment Classes are provided regular physical education as a class without individual consideration of student needs. The group developing the IEP and determining placement does not consider additional participation with nondisabled students on an individual basis. The teachers interviewed reported to OSEP that most students in Behavior Adjustment Classes could function in regular education classes if aides were available for support.</p>	
<p>OSEP found in its review of the special education programs in Agency C that the District has implemented some very innovative practices for integrating many students with serious emotional disturbance in regular education buildings. However, OSEP confirmed during interviews with two of the agency's diagnosticians that for the students placed in the two separate school programs for students with serious emotional disturbance, that no consideration is given for whether any individual student could participate in academic or nonacademic and extracurricular services and activities with their nondisabled peers except as a student begins the process of transitioning back into a regular education building.</p> <p>Two administrators in Agency E informed OSEP that students with serious emotional disturbance are placed in the regional program which is located in one self-contained class in a regular education building in the District. They further explained that no consideration is given for whether any individual student could participate in academic or nonacademic services and activities with nondisabled students.</p> <p>OSEP was informed by administrators in Agencies D and J that students with mental retardation are typically placed in self-contained classes. In response to OSEP's questions regarding the district's placement data, administrators in these agencies told OSEP that the option of regular or resource room class was not available for consideration in determining placement for students with mental retardation. It was further explained to OSEP that placement of students with mental retardation in regular education classes is not an option that child study teams (IEP teams) consider. The administrators confirmed that staff training was the major barrier to serving these students in regular education classes.</p> <p>Two administrators and two teachers in Agency K informed OSEP that secondary-aged students with moderate to severe disabilities from the 28 constituent districts are enrolled in Agency K's separate special education school because of the lack of available services or these students in their home districts.<sup>10</sup> The reasons given for why these students are not served in any other instructional arrangement and why the students are not served in their district of residence included lack of personnel, such as vocational education specialists, and the students' need for vocational education, employment training and counseling services, not available in the student's home school or district. The administrators and teachers reported to OSEP that there were some students with disabilities attending the separate school for part of the school day and the other part of the day these students were placed in self-contained classes in a regular education school building. Some of the part-time students participated in regular physical education classes with their nondisabled peers. However, there are no integration opportunities available to the students who are served in the separate school for full day programs. OSEP confirmed that there was no individualized determination as to the maximum extent to which it was appropriate for each child placed in the separate high school to participate with students who do not have disabilities in nonacademic and extracurricular services and activities. The administrators and teachers further explained that when the student has met all IEP goals and objectives, then the team will consider reintegrating the student into a regular education building; however, if the parents want the student to attend school in the home district, the separate school IEP team will help facilitate the transition. In addition, OSEP learned that the students with disabilities were</p>	

<sup>10</sup> OSEP visited Agency K's separate special education school during its 1992 monitoring review of TEA and found the district's placement practices and procedures were inconsistent with the least restrictive environment requirements. In the monitoring report, OSEP acknowledged that multi-district instructional programs may be used to make efficient use of districts' resources to address the needs of students with severe disabilities, but expressed concerns that decisions regarding the placement of these students and their readiness for interaction with nondisabled students for nonacademic and extracurricular services and activities is not based on the individual needs and abilities of the student.

<i>O S E P F I N D I N G</i>	<i>E X P E C T E D R E S U L T S</i>
<p>provided a student pass which allowed them to attend games or assemblies that might be available on their home school campuses. However, it was the student's responsibility to find out about the scheduling of events and to make arrangements for attending home school activities.</p>	
<p>Administrators, regular and special education teachers and related service personnel in Agencies E, G and H reported to OSEP that the decision to remove students with disabilities from the regular education classroom is not based on an individual determination that the student's education could not be achieved satisfactorily, even with the use of supplementary aids and services, without such removal. They informed OSEP that special education instruction in regular education classes (i.e., special education instruction pursuant to an IEP, without removal to a special education setting) is not available for consideration in determining students' placements.</p> <p>Two administrators in Agency E reported to OSEP that the option of placement in a regular education classroom with supplementary aids and services provided was not available for consideration at the high school level. Staff allotment and the need for inservice training of staff were barriers to serving more students with disabilities in regular education classes. Four administrators, a diagnostician and a teacher in Agency G informed OSEP that of the district's five high schools, two of them provide special education support in all subject areas to students without removal from regular education classes. Two other high schools have implemented a model where a student with disabilities must be removed from regular education to a special education resource room for instruction in math, if they need special education support in that area. Students with disabilities who attend the fifth high school are currently removed from regular education to a resource room for parts of the school day. Many of these students would be able to achieve education successfully in the regular classroom with special education support if the models that are being used completely in two of the high schools and partially in the other two high schools, were available in their high school. Two administrators and two teachers in Agency H reported to OSEP that most students with disabilities receive special education services through the "content mastery" model in resource classrooms. The teachers indicated that using aides in regular education classes working directly with students, as opposed to providing special education in resource classroom, would facilitate a student's ability to remain in regular education classes for instruction and participation in regular education activities. The administrators confirmed that while the fully mainstreamed model is encouraged, trained staff are not available on all campuses. Additional staff could also be needed to implement the fully mainstreamed instructional model. It was explained to OSEP that the philosophy of the building based administrator is also very significant to how students with disabilities are integrated into the regular education program. Two administrators stated that the goals for next year included co-teaching of regular and special education teachers and inservice training for regular education teachers. Another administrator explained to OSEP that the district gets less dollars for fully mainstreamed students than for the students with disabilities that are served in the resource room and self-contained classrooms.</p> <p>Teachers and administrators in Agencies A, C, G, H and K reported to OSEP that the placement decision is made by the IEP team, after the child is determined eligible for special education, but prior to the development of the IEP. The IEP team develops the goals and objectives after they determine where services will be provided.</p>	

OSEP FINDING	EXPECTED RESULTS
<p><b><u>FREE APPROPRIATE PUBLIC EDUCATION - RELATED SERVICES</u></b></p> <p><b><u>BACKGROUND:</u></b> During OSEP's 1992 review of TEA, OSEP made findings regarding the provision of free appropriate public education requirements. In its February 26, 1993 monitoring report, OSEP found that TEA's monitoring procedures included no method to determine whether an individualized determination is made by the IEP committee as to the kind and amount -- if any -- of related services that each child requires to benefit from special education. As part of the 1992 review, OSEP found noncompliance regarding the provision of free appropriate public education in three of the six agencies it visited. Specifically, OSEP found that public agencies were not making individualized determinations as to whether certain students needed speech therapy as a related service to benefit from special education; and that public agencies were not making individualized determinations as to whether certain students needed direct related services to benefit from special education. As a result of these findings, TEA was required to initiate a number of corrective actions to address the provision of free appropriate public education findings included in the 1993 Monitoring Report. These actions included revising TEA's monitoring system, issuing a memorandum to all agencies across the State regarding the requirements for the provision of free appropriate public education, and conducting Statewide training regarding the implementation of the provision of free appropriate public education requirements for students with disabilities. TEA has completed all of the corrective actions required to address the deficiencies identified by OSEP in the 1993 Monitoring Report with respect to the provision of free appropriate public education requirements.</p> <p>As part of its current monitoring process, OSEP reviewed the most recent monitoring reports issued by TEA to each of the eleven public agencies visited by OSEP. In eight of the agencies, TEA had not conducted district-wide special education compliance reviews subsequent to OSEP's 1992 review. Therefore, TEA had not used its revised monitoring procedures to identify and ensure correction of any violations of with regard to provision of a free appropriate public education in those agencies. For the three agencies which had been monitored subsequent to OSEP's 1992 review (Agencies A, E and H), no findings were made with regard to provision of a free appropriate public education. As noted in the findings below, OSEP found noncompliance with regard to this requirement in Agency H.</p>	
<p><b><u>FINDINGS:</u></b> TEA has not fully ensured that public agencies provide the kind and amount of related services to all students who require them to assist the child to benefit from special education. <b>300.300 and 300.16(a).</b></p> <p>While onsite in September 1996, OSEP staff reviewed student files and interviewed teachers, related service providers, and district level administrators. OSEP found that three of 11 agencies did not provide or pay for psychological counseling services for students who need that service as a component of a free appropriate public education. In Agency B, OSEP reviewed three files of students with serious emotional disturbance. In one file outpatient therapy was recommended, and in the other two files there were no goals for counseling services included in the IEP. One student's IEP provided for counseling consultation, and the psychological evaluation report stated Recommended...secure/continue outside counseling... it should be noted that the school district does not provide for long-term psychiatric treatment or psychotherapy which are the responsibility of the guardians/ foster parents. The counselor told OSEP that psychological counseling goals is not generally included in the IEP. The counselor stated further that last year, services were provided based on availability, but this year all students in the behavior adjustment class (BAC) will receive counseling services. In Agency C, the psychologist told OSEP that psychological counseling is not available as a related service regardless of student need because the psychologist and assistant psychologist have no time to provide it because they are busy conducting evaluations. Counseling services from a school counselor are available, but they are not written in the IEP. The psychologist and three assistant psychologists acknowledged that while a number of services are available to address emotional and behavioral needs of students with disabilities, psychological counseling is not written in the IEP even if a student needed that service to benefit from special education. A building administrator stated that if a student needs psychological counseling the agency refers the student's parents to outside agencies to get the service. A building administrator and a teacher in Agency H reported to OSEP that psychological counseling services as required by the students' IEPs had not been provided to at least two children in the building. The contractual services had not begun at the time of OSEP's visit and the administrator stated that there had been a problem with the contractor.</p> <p>In four of the 11 agencies it visited OSEP found specific related services in student IEPs were either not provided at all or were delayed. In Agency I, 15 students were not receiving occupational therapy services. The special education administrator stated that the services will be made up in the summer. The administrator further stated that TEA is aware of the problem, but has not offered any assistance in response to requests from the agency. In Agency H, related services specified in the IEPs for 58 students were not provided, and services to two additional students were delayed; the services impacted were: speech therapy--56 students; counseling services--two students; occupational or physical therapy--two students. In response to questions regarding the speech services, two administrators explained to OSEP that speech is a contracted service and the providers had been delayed in starting the services this school year. The administrator stated that compensatory services will be offered.</p> <p>A building administrator in Agency K stated in an interview with OSEP that speech services have been delayed for 46 students. At the time of OSEP's visit a speech therapist</p>	<p>TEA must ensure that:</p> <p>(1) all students with disabilities receive any psychological services, as defined under 300.16(b)(8), and speech, occupational, and physical therapy services that they require to benefit from special education; (2) such services are provided as specified in their IEPs; and (3) an adequate supply of qualified personnel is available to provide such services.</p>

OSEP FINDING	EXPECTED RESULTS
<p>had not been hired but had not yet begun to provide services due to illness. The special education administrator stated that because of the speech therapist vacancy, students lost from 4 to 5 weeks of services.</p>	
<p><b><u>FREE APPROPRIATE PUBLIC EDUCATION/CHILD FIND - DELAY IN PROVISION OF SERVICES</u></b></p> <p><b><u>BACKGROUND:</u></b> During OSEP's 1992 review of TEA, OSEP found that TEA did not meet its responsibility to ensure that all children with disabilities who are in need of special education and related services, are identified, located and evaluated and further, that an evaluation is completed within a reasonable period of time after a public agency becomes aware that a child is in need of an evaluation, so that the child's right to receive a free appropriate public education is not denied and delayed. While this finding specifically related to children with disabilities under the age of three, OSEP found that TEA's monitoring procedures did not include an effective method for determining whether each public agency ensures that all children with disabilities who are in need of special education and related services are identified, located and evaluated, and that the right of children with disabilities to a free appropriate public education is not denied or delayed because the agency does not ensure that evaluation is completed within a reasonable period of time. OSEP made site visits to six local education agencies and found noncompliance with this requirement in three of these agencies. Specifically, OSEP found that public agencies were not ensuring that the evaluation of children with disabilities occurred within a reasonable period of time and therefore, these children could not begin to receive a free appropriate public education until after an evaluation could be completed. As described above, TEA was required to initiate a number of corrective actions to address the child find findings included in the 1993 Monitoring Report. These actions included revising TEA's monitoring system and local educational agency application procedures, issuing a memorandum to all agencies across the State regarding the requirements for child find, and conducting Statewide training regarding the implementation of the child find requirements for all students with disabilities. TEA has completed all of the corrective actions required to address the deficiencies identified by OSEP in the 1993 Monitoring Report with respect to the free appropriate public education/child find requirements.</p> <p>As part of its current monitoring process, OSEP reviewed the most recent monitoring reports issued by TEA to each of the eleven public agencies visited by OSEP. In eight of the agencies, TEA had not conducted district-wide special education compliance reviews subsequent to OSEP's 1992 review. Therefore, TEA had not used its revised monitoring procedures to identify and ensure correction of any violations of with regard to provision of a free appropriate public education in those agencies. For the three agencies which had been monitored subsequent to OSEP's 1992 review (Agencies A, E and H), no findings were made with regard to provision of a free appropriate public education. As noted in the findings below, OSEP found noncompliance with regard to this requirement in Agency H.</p> <p><b><u>FINDING:</u></b> TEA has not fully ensured that public agencies do not deny or delay a child's right to receive a free appropriate public education by failing to provide an initial evaluation within a reasonable period of time, as required by 300.300, 300.128 and 300.220. Although Part B does not set forth a specific standard for conducting initial evaluations, each State must establish and implement standards to ensure that the right of each child with disabilities to receive a free appropriate public education is not denied or delayed because the responsible public agency does not conduct an initial evaluation within a reasonable period of time. Administrators and agency officials responsible for coordination and conducting evaluations in Agencies B, H and J informed OSEP during interviews that diagnostic services for the initial evaluation of students with disabilities had been delayed longer than the 60 calendar days allowed by State law, for many students with disabilities residing in these districts. The administrators reported to OSEP that student evaluations are delayed because of the unavailability of related service personnel to conduct the evaluations and scheduling problems. Agency B administrators reported to OSEP that 521 initial evaluations for students exceeded the State's 60 calendar day limit. An Agency H administrator informed OSEP that there were 87 known outdated initial referrals for whom the evaluation process has taken much longer than the 60 calendar days allowed by State law. An Agency J administrator explained to OSEP that of the three regions in the district, the northeast region had 114 initial evaluations for students that had exceeded the State's 60 calendar day limit.</p>	<p>TEA must ensure that the provision of FAPE to children with disabilities is not denied or delayed due to failure to complete timely initial evaluations.</p>
<p><b><u>PROTECTION IN EVALUATION PROCEDURES</u></b></p> <p><b><u>BACKGROUND:</u></b> During OSEP's 1992 review of TEA, OSEP found that TEA was meeting its responsibility under 300.534(b) to ensure that public agencies conduct an evaluation that meets the requirements of 300.532 for each child with a disability, every three years, or more frequently if conditions warrant, or if the child's parent or teacher requests an evaluation. OSEP reviewed TEA's monitoring materials and procedures and determined that TEA has a method in place for making compliance determinations regarding this requirement through record review in public agencies with verification through the interview process. OSEP also reviewed the most recent monitoring reports issued by TEA for each of the eleven public agencies visited and found that TEA made findings with regard to the Protection in Evaluation Procedures requirements in many of these agencies.</p> <p>When OSEP reviewed TEA's most recent monitoring reports for these agencies, it found that, for eight agencies, TEA had not monitored subsequent to OSEP's 1992 review. For three agencies, OSEP had monitored since OSEP's last review but made no findings of noncompliance for this requirement.<sup>11</sup></p>	<p>TEA must ensure that public agencies evaluate each child with a disability at least once every three years.</p>

<sup>11</sup> In a self-evaluation performed as a part of the Results Based Monitoring process, Agency H identified reevaluation as an area of noncompliance. When TEA later conducted an onsite verification visit, it

OSEP FINDING	EXPECTED RESULTS
<p><b>FINDING:</b> TEA has not fully ensured that public agencies conduct an evaluation that meets the requirements of 300.532 for each child with a disability, every three years, or more frequently if conditions warrant, or if the child's parent or teacher requests an evaluation. <b>300.534(b).</b></p> <p>OSEP interviewed administrators and agency officials responsible for coordination and conducting evaluations in Agencies A, B, H, J and K to determine whether all students with disabilities are evaluated at least every three years, or more often if warranted or requested by the child's parent or teacher. These officials acknowledged that some evaluations were delayed by three to twelve months beyond the three year timeline. They reported to OSEP that there was a waiting list of students in each of these agencies whose reevaluations were overdue. Administrators from Agencies A and H informed OSEP that at least 100 students' reevaluations were delayed. Administrators in Agency B explained to OSEP that 1,244 overdue reevaluations exceeded the three year time limit. An Agency J administrator explained to OSEP that of the three regions in the district, the northeast region had 265 overdue reevaluations for students with disabilities that exceeded the three year time limit. An administrator in Agency K reported to OSEP that student evaluations are delayed in the district because of the unavailability of speech therapists to conduct the evaluations. The administrator was not sure just how many students' reevaluations were delayed beyond the required three year time line, but attributed the delay to scheduling problems for speech assessments due to the unavailability of a speech therapist. At the time of OSEP's visit, the district had recently hired a speech therapist, however, the therapist had not begun providing services nor completing assessments due to a personal illness.</p>	
<p><b>TRANSITION SERVICES</b></p> <p><b>BACKGROUND:</b> As required by 300.346(b)(1), the IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services as defined in 300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting. Because 300.346(b)(1) requires that the IEP include a statement of needed transition services, the content required by that section must be included as part of the IEP and must, like all required IEP content, be developed in a meeting that meets the requirements of 300.344 and 300.345.</p> <p>Section 300.344 requires that, if a purpose of an IEP meeting is the consideration of transition services for a student, the public agency must invite the student, and a representative of any other agency that is likely to be responsible for providing or paying for transition services. Section 300.345(b)(2) requires that if a purpose of an IEP meeting is the consideration of transition services for a student, notice to the parents of the IEP meeting must, in addition to the other content required for parent notice of IEP meetings, also: (1) Indicate this purpose; (2) Indicate that the agency will invite the student; and (3) Identify any other agency that will be invited to send a representative.</p> <p>Texas has developed a Memorandum of Understanding on Transition Planning for Students Receiving Special Education Services, that is set forth in State regulations at 89.246 and included in TEA's Part B State Plan. That memorandum provides for public agencies to convene a meeting to develop an individualized transition plan (ITP). While TEA's procedures do not prohibit the development of an individualized transition plan as part of the same meeting that is used to develop the IEP, they permit public agencies to develop separate IEPs and individualized transition plans in separate meetings. OSEP informed TEA in a September 11, 1996 letter that the procedures in that Memorandum were not sufficient to ensure that public agencies complied with all of the transition-related Part B requirements at 300.344(c), 300.345(b)(2), and 300.346(b). TEA subsequently submitted to OSEP TEA Standard Application System Schedule 5C (revised August 1996) as the document that is used to ensure that public agencies comply with those Part B requirements. TEA explained that it uses Schedule 5C to provide guidance to local educational agencies regarding required content for Part B local education agency applications, to review the adequacy of policies and procedures in those applications, and as a tool for monitoring compliance. OSEP reviewed Schedule 5C, and determined that it does address all of the transition-related Part B requirements at 300.344(c), 300.345(b)(2), and 300.346(b).</p> <p>A public agency may consider issues relating a student's transition related needs in meetings other than IEP meetings, as explained above; however, the IEP content required by 300.346(b) and 300.18 must be developed in a meeting that meets the requirements of 300.344 and 300.345. Therefore, in determining whether public agencies met the requirements of 300.346(b) and 300.18 regarding transition-related IEP content, OSEP considered only content included in students' IEPs, developed consistent with the requirements of 300.344 and 300.345.</p>	
<p><b>FINDINGS:</b> OSEP reviewed the IEPs for 59 students and IEP meeting notices for 48 students, aged 16 or older, in ten senior high schools in Agencies A, B, C, D, E, F, G, J, and K, and, as detailed below, determined that in most cases: (1) the IEPs did not include a statement of needed transition services that met the requirements of 300.346(b)</p>	

determined that this agency was in full compliance with the reevaluation requirement.

OSEP FINDING	EXPECTED RESULTS									
and 300.18 (48/59); and (2) notice to the parents of IEP meetings did not indicate that a purpose of the IEP meeting would be the consideration of transition services for the student (29/48) or that the agency would invite the student to the meeting (47/48).										
<p><b>FINDING 1--STATEMENT OF NEEDED TRANSITION SERVICES</b> TEA did not ensure that, as required by 300.346(b), the IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), includes a statement of the needed transition services as defined in 300.18, including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting. As defined in 300.18, this statement of needed transition services must be a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. It must: (1) be based on the individual student's needs, taking into account the student's preferences and interests; and (2) include (i) instruction; (ii) community experiences; (iii) the development of employment and other post-school adult living objectives; and (iv) if appropriate, acquisition of daily living skills and functional vocational evaluation; if the IEP team determines that services are not needed in one or more of the areas specified in (i) through (iii), the IEP must include a statement to that effect and the basis upon which the determination was made.</p> <p>Of the IEPs reviewed in each of the nine agencies in which OSEP visited one or more senior high school, OSEP found that the following number of IEPs in each agency failed to include a coordinated statement of needed transition services that met the requirements of 300.346(b) and 300.18:</p> <table><tr><td>Agency A 8 of 9 files reviewed</td><td>Agency D 0 of 6 files reviewed</td><td>Agency G 4 of 8 files reviewed</td></tr><tr><td>Agency B 6 of 6 files reviewed</td><td>Agency E 6 of 6 files reviewed</td><td>Agency J 6 of 6 files reviewed</td></tr><tr><td>Agency C 8 of 8 files reviewed</td><td>Agency F 4 of 4 files reviewed</td><td>Agency K 6 of 6 files reviewed</td></tr></table> <p>These IEPs either included no transition-related information, did not include one or more of the components required by 300.18(b)(2)(I)-(iii) (instruction, community experiences, and the development of employment and other post-school adult living objectives) (or, if the IEP team determined that services were not needed in one or more of those areas, a statement to that effect and the basis upon which the determination was made), or did not set forth a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities.</p>	Agency A 8 of 9 files reviewed	Agency D 0 of 6 files reviewed	Agency G 4 of 8 files reviewed	Agency B 6 of 6 files reviewed	Agency E 6 of 6 files reviewed	Agency J 6 of 6 files reviewed	Agency C 8 of 8 files reviewed	Agency F 4 of 4 files reviewed	Agency K 6 of 6 files reviewed	TEA must ensure that the IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), includes a statement of the needed transition services as defined in 300.18.
Agency A 8 of 9 files reviewed	Agency D 0 of 6 files reviewed	Agency G 4 of 8 files reviewed								
Agency B 6 of 6 files reviewed	Agency E 6 of 6 files reviewed	Agency J 6 of 6 files reviewed								
Agency C 8 of 8 files reviewed	Agency F 4 of 4 files reviewed	Agency K 6 of 6 files reviewed								
<p><b>FINDING 2--PARENT NOTIFIED THAT CONSIDERATION OF TRANSITION SERVICES IS A PURPOSE OF IEP MEETING</b> TEA did not ensure, as required by 300.345(b)(2)(I), that, if a purpose of an IEP meeting is the consideration of transition services for a student, the notice of the meeting required under 300.345(a)(1) indicates that purpose, as indicated by the IEP meeting notices that OSEP reviewed:</p> <table><tr><td>Agency A 8 of 9 notices reviewed</td><td>Agency D 1 of 6 notices reviewed</td><td>Agency F 4 of 4 notices reviewed</td><td>Agency J 5 of 5 notices reviewed</td></tr><tr><td>Agency B 1 of 6 notices reviewed</td><td>Agency E 5 of 5 notices reviewed</td><td>Agency G 7 of 7 notices reviewed</td><td>Agency K 2 of 6 notices reviewed</td></tr></table>	Agency A 8 of 9 notices reviewed	Agency D 1 of 6 notices reviewed	Agency F 4 of 4 notices reviewed	Agency J 5 of 5 notices reviewed	Agency B 1 of 6 notices reviewed	Agency E 5 of 5 notices reviewed	Agency G 7 of 7 notices reviewed	Agency K 2 of 6 notices reviewed	TEA must ensure that notice to parents of an IEP meeting for which the consideration of transition services for a student is a purpose indicates that purpose.	
Agency A 8 of 9 notices reviewed	Agency D 1 of 6 notices reviewed	Agency F 4 of 4 notices reviewed	Agency J 5 of 5 notices reviewed							
Agency B 1 of 6 notices reviewed	Agency E 5 of 5 notices reviewed	Agency G 7 of 7 notices reviewed	Agency K 2 of 6 notices reviewed							
<p><b>FINDING 3--PARENT NOTIFIED THAT CONSIDERATION OF TRANSITION SERVICES IS A PURPOSE OF IEP MEETING</b> TEA did not ensure, as required by 300.345(b)(2)(I), that, if a purpose of an IEP meeting is the consideration of transition services for a student, the notice required under 300.345(a)(1) informs the parents that the student will be invited to the meeting, as indicated by the IEP meeting notices that OSEP reviewed:</p> <table><tr><td>Agency A 9 of 9 notices reviewed</td><td>Agency D 6 of 6 notices reviewed</td><td>Agency F 4 of 4 notices reviewed</td><td>Agency J 5 of 5 notices reviewed</td></tr><tr><td>Agency B 6 of 6 notices reviewed</td><td>Agency E 5 of 5 notices reviewed</td><td>Agency G 7 of 7 notices reviewed</td><td>Agency K 6 of 6 notices reviewed</td></tr></table>	Agency A 9 of 9 notices reviewed	Agency D 6 of 6 notices reviewed	Agency F 4 of 4 notices reviewed	Agency J 5 of 5 notices reviewed	Agency B 6 of 6 notices reviewed	Agency E 5 of 5 notices reviewed	Agency G 7 of 7 notices reviewed	Agency K 6 of 6 notices reviewed	TEA must ensure that notice to parents of an IEP meeting for which the consideration of transition services for a student is a purpose informs the parents that the student will be invited to the meeting.	
Agency A 9 of 9 notices reviewed	Agency D 6 of 6 notices reviewed	Agency F 4 of 4 notices reviewed	Agency J 5 of 5 notices reviewed							
Agency B 6 of 6 notices reviewed	Agency E 5 of 5 notices reviewed	Agency G 7 of 7 notices reviewed	Agency K 6 of 6 notices reviewed							